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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Wim Engelen

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HOWREY LLP

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FALLS CHURCH, VA 22042

EXAMINER

CERNOCH, STEVEN MICHAEL

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,593	Applicant(s) ENGELIN ET AL.	
	Examiner STEVEN CERNOCH	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 5-8, 10-13, 15 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No

3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) and furthermore in view of Adamson et al. (US Pat No 5,413,251).

Regarding claim 1, Capy et al. teaches a dispenser comprising a container for holding a product dispensed (Fig. 1, 5) and a dispensing mechanism (1) wherein the container further comprising a container body (5), further comprising at least one outlet opening arranged in or near the side opposite to said bottom (8), a trigger sprayer (1) and further comprising a conduit (2), a neck (11), but does not teach an external chamber, however Dargols et al. does teach an external chamber (Fig. 1, 7), a conduct (10), but does not teach an air bubble, however Adamson et al. does teach an air bubble (column 3, lines 32-52), and also does not teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser, however Ginther et al. does teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser (abstract, lines 6-9). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the conduct and external chamber of Dargols et al., the air bubble of Adamson et al. and the container contour of Ginther et al. in order to properly seat the container while keeping the air pressure balanced.

With regard to claim 3, Capy et al. does not teach a cylindrical body, however Dargols et al. does teach said cylindrical body (fig. 1, 1). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the cylindrical body of Dargols et al. to keep the fluid uniformly shaped.

In regards to claim 5, Capy et al. discloses wherein a protrusion is arranged close to the trigger sprayer to receive the end of a dip tube attached to said trigger sprayer (Fig.1, 14).

Regarding claim 6, Capy et al. teaches wherein the protrusion extends the conduct arranged in such a manner as to receive a dip tube attached to the sprayer (Fig.1, 14).

With regard to claim 7, Capy et al. discloses wherein the protrusion extends the neck arranged in such a manner as to receive a dip tube attached to the sprayer (Fig 1, 14).

In regards to claim 8, Capy et al. teaches that the protrusion is arranged in the neck (Fig.1, 14).

Regarding claim 10, Ginther et al. teaches that the sidewall of said container body is shaped in such a manner that said sidewall is resting on the forearm of a user (Fig. 1, 16).

With regard to claim 11, Capy et al. discloses wherein the protrusion contains an opening means and a closure means (Fig.1, 22).

In regards to claim 12, Dargols et al. teaches wherein the external chamber (Fig.1, 7) forms the external chamber of a coaxial tube (3) and the internal chamber (10) of said coaxial tube bears a trigger sprayer (2).

Regarding claim 13, Dargols et al. discloses that a dip tube (Fig. 1, 3) of the trigger sprayer (2) is lodged in the internal chamber (10) of the coaxial tube (3), extending into the external chamber of the coaxial tube (7).

With regard to claim 15, Ginther et al. teaches the external chamber (Fig.1, 18) of the coaxial tube (20) is shaped in the form of a hand grip and the container body is shaped such as to ergonomically rest on the user's forearm (abstract, lines 6-9).

In regards to claim 18, Capy et al. teaches an opening for filling in its bottom and/or in one or more of its sidewalls and/or in its side opposite to said bottom (Fig.1, 14).

Re claim 19, Adamson et al. teaches the container body (Q) is operated at a pressure P_b and a liquid level B and the external chamber (R,) is operated at a pressure P_a and a liquid level A, P_a being equal to P_b plus a hydrostatic pressure (P_h) from a liquid level difference in B and A (C), and the conduct (G) balancing a pressure between the pressure P_b and the pressure P_a (column 3, lines 32-52).

Re claim 20, Adamson et al. teaches the air bubble has a pressure P_a that is greater than a pressure P_b in the external chamber (column 3, lines 39-45).

Re claim 21, Capy et al. teaches a dispenser comprising a container for holding a product dispensed (Fig. 1, 5) and a dispensing mechanism (1) wherein the container further comprising a container body (5), further comprising at least one outlet opening arranged in or near the side opposite to said bottom (8), a trigger sprayer (1) and further comprising a conduit (2), a neck (11), but does not teach an external chamber, however Dargols et al. does teach an external chamber (Fig. 1, 7), a conduct (10), but does not teach an air bubble or the container body have a pressure P_b or an external chamber having a pressure P_a , however Adamson et al. does teach an air bubble and said pressures P_b and P_a (column 3, lines 32-52), and also does not teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser, however Ginther et al. does teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser (abstract, lines 6-9). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the conduct and external chamber of Dargols et al., the air bubble of Adamson et al. and the container contour of Ginther et al. in order to properly seat the container while keeping the air pressure balanced.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Richter et al. (US Pat No 5,433,347).

Regarding claim 4, Capy et al. through Adamson et al. does not teach wherein the container body has a cubical form comprising at least four side walls interconnecting the bottom with the side opposite thereto, however Richter et al. does teach wherein the container body has a cubical form (column 6, lines 61-63). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the cubical container of Richter et al. in order to ease in storage of the apparatus when done.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Libit et al. (US Pat No 6,213,358 B1).

With regard to claim 14, Capy et al. through Adamson et al. does not teach that the internal chamber of the coaxial tube is inclined by 10 to 45 degrees versus a sprayer axis perpendicular to the longitudinal spray axis, however Libit et al. does teach that the internal chamber of the coaxial tube is inclined by 10 to 45 degrees versus a sprayer axis perpendicular to the longitudinal spray axis (column 4, lines 23-26). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the internal chamber of the coaxial tube is inclined by 10 to 45 degrees so as to direct the sprayed liquid at other than a 90 degree angle.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Maas et al. (US Pat No 5,730,335).

In regards to claim 16, Capy et al. through Adamson et al. does not disclose wherein the trigger sprayer comprises a precompression system, however Maas et al. does disclose wherein the trigger sprayer comprises a precompression system (column 1, lines 24-28). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the precompression system of Maas et al. for the use of pressurized liquids.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Maas et al. (WO 00/76876).

Regarding claim 17, Capy et al. through Adamson et al. does not teach wherein said dispensing mechanism carries at least one label displaying content and users information, however Maas et al. does teach wherein said dispensing mechanism carries at least one label displaying content and users information (Abstract, lines 15-22). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the labeling of Maas et al. to warn the consumer of any uses or miss-uses they may need to know about.

Response to Arguments

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that the motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969). In this case the cited art by all accounts and presumptions are well within the endeavor of one of ordinary skill in the art.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Seelhofer et al. (EP 1,035,034) discloses a plastic container and corresponding metering element with a closure. Wright et al. (US Pat No 5,160,071) teach vertical spray bottle nozzle. Arpin et al. (US Pat No 2,423,220) teaches a water pistol.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC
1219/2007

/Len Tran/
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